IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3277 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VADODARA SHAHER SUDHARAI NOKARMANDAL

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 3277 of 1988

MR Gupta for Mr. YN OZA for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1

Ms. Manishaben Lavkumar, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2004

ORAL JUDGEMENT

Learned advocate Mr. Gupta is appearing for the

petitioner. Learned AGP Ms. Manishaben Lavkumar is appearing for the respondent No.2. Learned advocate Mr. Pranav G. Desai is appearing for the respondent No.1. However, today, learned advocate Mr. Desai has filed leave note.

In this petition, the petitioner has challenged the award made by the Industrial Tribunal in Reference (IT) No. 14/84 [new number 525/84] wherein the tribunal has rejected the reference. Learned advocate Mr. Gupta has raised two contentions before this court one of which is that the post of Maintenance Supervisor, Ajwa and the post of Maintenance Supervisor, Water Works both are having the same and similar nature of work and qualifications are also same, therefore, Maintenance Supervisor, Ajwa is entitled for the grade of Rs.425-700 similar to Maintenance Supervisor, Water Works. He also submitted that as regards higher grade benefit also, maintenance supervisor, Ajwa is entitled for such higher grade benefit after completion of 10-18-22 years service as per the Circular dated 18th October, 1992. After reading paragraph 4 to 9 before this Court, it was pointed out by him that the qualification of both the posts are similar and both the posts are interchangeable on the basis of the evidence of Narendra Narayanrao Mohite Exh. 29, therefore, it was his submission is that the Tribunal has committed error in not granting the benefit of the scale of Rs.425-700 to the Maintenance Supervisor, Ajwa.

I have considered the submissions made by Ms. Manishaben Lavkumar for respondent No.2.

I have perused the award in question made by the tribunal. The classification between two posts has been made by the Corporation on the basis of the educational qualification. The post of Maintenance Supervisor at Ajwa has been upgraded from the post of Work Mistry by the Corporation vide resolution dated July 30, 1979. The post of Work Mistry was carrying the pay scale of Rs.260-430 whereas the post of Maintenance Supervisor, Water Works was created by the General Body of the Corporation on 19th January, 1980 and qualification and experience has also been prescribed for the scale of Rs.425-700. The post of Maintenance Supervisor Water Works is to be filled up by direct recruitment from the diploma holders. Therefore, on the basis of this two evidence, one by the petitioner and the another by the Corporation, the tribunal examined the matter on the aspect of different qualification for both the posts and experience and, therefore, different scale attached to

the respective post is justified on the basis of educational qualification prescribed for each of the posts.

This aspect has been recently examined by the Hon'ble Apex Court in M.P. Rural Extension Officers Association v. State of M.P. and another, [AIR 2004 SC 2020]. The apex court was considering the applicability of the principle of equal pay for equal work in two sets of employees performing similar duties and functions; their posts are interchangeable. The apex court held that when the classification between them is based on educational qualification for purpose of grant of pay, such classification is valid. As regards policy decision of the State that post shall be filled up only by graduates, it was held that it is, ex facie, not arbitrary. Recently, Division Bench of this Court has also examined the doctrine of Equal Pay for Equal Work in Joshi Tushar Tansukhbhai & Ors. v. State of Gujarat [2004(2) GLR 1188]. It was held by the Division Bench of this Court that the theory of equal pay for equal work cannot be stretched in an unlimited manner, regardless of the attendant circumstances of the case; policy underlying the decision of the Government cannot be ignored totally; a decision based on the recommendation of an expert committee must weigh with the Court while exercising the power of judicial review.

In view of this decision of the apex court and also in view of the facts of the present case that the posts of Maintenance Supervisor, Ajwa as well as the post of Maintenance Supervisor, Water Works may be interchangeable but they are having different qualification and, therefore, the Corporation has rightly classified the posts and has rightly granted the pay scale of Rs.425-700 to the Maintenance Supervisor Water Works and same pay is not available to the Maintenance Supervisor, Ajwa. The Tribunal has rightly examined the matter from all angle and was right in rejecting the reference and in doing so, no error has been committed by the tribunal. The tribunal has also given reasons in support of its conclusion. This Court cannot reappreciate the evidence as an appellate authority. Learned advocate Mr.Gupta has not been able to point out any error apparent on the face of the record. Therefore, according to my opinion, there is no substance in this petition and the same is required to be dismissed.

In the result, this petition is dismissed. Rule is discharged. Interim relief if any shall stand vacated. There shall be no order as to costs.

(H.K. Rathod,J.)

Vyas